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CLERK

IN THE
Supreme Court of the United States

October Term, 1943

No. 238

DANIEL W. NORRIS, EMMET L. RICHARDSON
and PERRY J. STEARNS, as Executors of the
Will of Fannie W. Norris, Deceased,

Petitioners.

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Petition for Writ of Certiorari to the United States Circuit
Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI AND BRIEF

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INDEX

Argument	11-62
Brief	5-62
Conclusion	62
Facts	6
Jurisdiction	5-9
Opinions below	5
Petition for Writ of Certiorari	1-5
Specifications of Errors	9-10
Statement of Case	9
Summary of Argument	11

SYNOPSIS OF ARGUMENT

A. Commissioner has no discretion to deny deductions	11-13
B. Regulations (and so law) provide period after death to meet conditions	13-24
C. Charitable intent of Congress aided by legal presumption	24-29
D. Wisconsin Law Controls, makes trust imperative, and relates trustees' acts back to testatrix, as of date of death	29-39
E. Certiorari should be granted because: important Federal issues are involved; the circuit courts are not following the decisions of this court in principle; and there are conflicts in decisions between circuits	39-62

INDEX OF CASES

Asby, Will of	34
Beggs vs. U. S., 27 F. S. 599	53
Benjamin, Estate of, 235 Wis. 152	38
Blair vs. Comm., 300 U. S. 5	29
Blossom Estate, 45 B. T. A. 691	21
Brown vs. Comm., 3 Cir., 50 F (2) 842	2, 25, 26, 27, 44, 46, 47
Brown vs. Rontzahn, 6 Cir., 63 F (2) 914	44, 48
Burdick vs. Comm., 2 Cir., 117 F (2) 972	56, 58
Chanler vs. Kelsey, 205 U. S. 466	27
City Bank Farmers' Trust Co. vs. U. S., 2 Cir., 74 F (2) 692	26, 40, 41
Comm. vs. 1st National Bank, 5 Cir., 102 F (2) 129	44, 49, 61
Corsecott vs. State, 178 Wis. 661	52
Cowan vs. Beans, 155 Wis. 417	34
Crooks vs. Harrelson, 282 U. S. 55	59
Davison vs. Comm., 2 Cir., 81 F (2) 16	25, 35, 44, 47
Dimock vs. Corwin, 2 Cir., 99 F (2) 799; 306 U. S. 363	44, 48, 61
Dodge vs. Williams, 46 Wis. 70	34
Doe, Will of, 192 Wis. 333; 232 Wis. 34	31, 32
Edwards vs. Slocum, 264 U. S. 61	13
Farmers' Loan and Trust Co. vs. Minn., 280 U. S. 204	25
First Trust Co. of St. Paul vs. Reynolds, 46 F. S. 497	58
Fox Film Corp. vs. Knowles, 261 U. S. 326	34
Gallun, Estate of, 215 Wis. 314	34
Gammons vs. Hassett, 1 Cir., 121 F (2) 229.....	46, 59, 61
Gould vs. Gould, 245 U. S. 151	59
Hanover Star Mill. Co. vs. Metcalf, 240 U. S. 403..	9
Helvering vs. Canfield, 291 U. S. 163	9
Helvering vs. Grinnell, 294 U. S. 153	29, 44
Helvering vs. R. J. Reynolds Tobacco Co., 306 U. S. 110	15
Helvering vs. Safe Deposit and Trust Co. of Balt., 316 U. S. 56	29, 44
Hood vs. Dorer, 107 Wis. 149	34

Humes vs. U. S., 276 U. S. 487	40
Humphrey vs. Millard, 2 Cir., 79 F (2) 107	44, 61
Ithaca Trust Co. vs. U. S., 279 U. S. 1514	15, 20, 38, 41, 42, 54, 55, 56, 50
Johnston, Estate of, 186 Wis. 599	38
Knoernschild vs. Comm., 7 Cir., 97 F (2) 213	23, 42, 60
Lau Ow Bew vs. U. S., 144 U. S. 47	8
Levey vs. Smith, 7 Cir., 103 F (2) 643	47
Lyeth vs. Hoey, 305 U. S. 188; 2 Cir., 96 F (2) 141	26, 35, 37
Magnum Import Co. vs. Coty, 262 U. S. 159	8
Mason vs. Fearson, 9 How. 248	11
Mead vs. Welch, 9 Cir., 95 F (2) 617	48, 61
Meierhof vs. Higgins, 2 Cir., 129 F (2) 1002	2, 51
Mississippi Valley Trust Co. vs. Comm., 8 Cir., 72 F (2) 197	35, 36, 51
Norris vs. Comm., 134 F (2) 796; 46 B. T. A. 705	5, 19, 22, 25, 28, 29, 30, 31, 46, 59
Olson, Will of, 165 Wis. 409	32
Osborne vs. Gordon, 86 Wis. 92	32
Platt, Will of, 205 Wis. 290	32
Potter vs. Bowers, 2 Cir., 89 F (2) 687	48
Robbins vs. Comm., 1 Cir., 111 F (2) 828	37
St. Louis Union Trust Co. vs. Burnet, 8 Cir., 59 F (2) 922	44, 49
Sawtelle vs. Witham, 94 Wis. 412	34
Smith vs. Comm., 1 Cir., 78 F (2) 897	2, 37
Supervisors vs. U. S., 4 Wall. 435	11
Taft vs. Comm., 304 U. S. 351	9, 34
U. S. vs. Biwabik Min. Co., 247 U. S. 116	9
U. S. vs. 4th National Bank in Wichita, 10 Cir., 83 F (2) 85	53
U. S. vs. Provident Trust Co., 291 U. S. 272	13, 20, 25
Wasserman Estate, B. T. A. Memo, Docket No. 106420	21
Watkins vs. Fly, 5 Cir., June 4, 1943, P. H. 1943 par. 62,677, 62,738	61
Y. M. C. A. vs. Davis, 264 U. S. 47	13, 31

INDEX OF STATUTES, TEXTS, ETC.

26 A. L. R. 1359	27
Bogert on Trusts	33
"Discourse upon Statutes"	22
"Federal Death Tax" by John E. Hughes	20
"Federal Income, Gift and Estate Taxation" by Rab- kin and Johnson	21
Hughes, John E., "Fed. Death Tax"	20
Internal Revenue Code, Sec. 812 (d)	8, 12, 16
Internal Revenue Code, Sec. 821	15
Kent, Commentaries	26, 27
Rabkin and Johnson, "Fed. I. G. and E. Taxation"	21
Regulations 37, Art. 56	14, 15, 40
Regulations 63, Art. 50	15, 49
Regulations 68, Art. 47	15, 54
Regulations 70, Art. 47	15
Regulations 80, Art. 44	52
Regulations 80, Art. 47	15, 16, 22, 24, 36, 38, 52, 58
Regulations 80, Art. 63	15
Regulations 105, Sec. 81.46	17
Restatement, Law of Property	24
Restatement, Law of Trusts	24, 33
Revenue Act of 1918, Sec. 403 (a) (3)	13, 14, 40
Revenue Act of 1926, Sec. 303 (a) (3)	8, 12, 38
Revenue Act of 1942, Sec. 408 (a)	18, 45
Thorne, "Discourse on Statutes"	22
28 U. S. C. A. 347, 377	5
Washburn, Real Property	27
Wis. Stats. Sec. 72.01, 72.04, 72.15 (8)	37, 39
Wis. Stats. Sec. 232.23, 232.24	31
Words and Phrases	24, 52
Yale Law Journal	21

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Will of Fannie W. Norris, Deceased,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Petition for Writ of Certiorari to the United States
Circuit Court of Appeals for the Seventh Circuit.

To the Honorable Harlan Fiske Stone, Chief Justice
of the United States, and the Associate Justices of the
Supreme Court of the United States.

Your petitioners respectfully show:

I. SUMMARY STATEMENT

This proceeding was commenced in the United States
Tax Court, then known as the United States Board of
Tax Appeals, to redetermine a deficiency of United States
estate taxes assessed against petitioners, as executors of
the will of Fannie W. Norris, Deceased. The petitioners,
in their United States estate tax return, claimed deduc-
tions for two transfers to charity made by them (T. 4, 14,
121, 149), and the Commissioner disallowed these deduc-
tions and determined the deficiency in question (T. 14,
141, 142). The United States Board of Tax Appeals and
the United States Circuit Court of Appeals for the Seventh
Circuit held the two transfers not deductible. (T. 189)

Notice of deficiency was dated June 28, 1940 (T. 137).

The matter was heard by the United States Board of Tax Appeals on the 29th day of September, 1941 (T. 143), and on March 18, 1942 the decision of the Board was promulgated, reported in 46 U. S. B. T. A., 705 (T. 154-165). Due appeal was taken to the United States Circuit Court of Appeals, Seventh Circuit, June 6, 1942 (T. 2); hearing had January 14, 1943; decision made April 8, 1943; ^(T. 178) and petition for rehearing denied May 10, 1943. ^(T. 179) The opinion of the Circuit Court of Appeals is reported at 134 F. (2d) 796. ^(T. 176-181.)

II. REASONS FOR ALLOWANCE OF THE WRIT

1. The decision of the Circuit Court of Appeals for the Seventh Circuit that transfers to charity, conditional as of the date of death, cannot be allowed as deductions ^(T. 176) even though such condition has been performed ^(T. 176) and the event has occurred before the deduction can be allowed ^(T. 176) is in conflict with Regulations 80, Art. 47 having the force of law and with decisions of the Circuit Court of Appeals in other circuits on the same point in the cases of *Brown vs. Commissioner*, (3 Cir.) 50 F. (2d) 842; *Meierhof vs. Higgins*, (2 Cir.) 129 F. (2d) 1002; *Smith vs. Commissioner*, (1 Cir.) 78 F. (2) 897, and a number of other cases discussed in the brief submitted herewith.

2. The decision of the Circuit Court of Appeals that the transfers in question did not speak as of date of death, ^(T. 176) the same as if set forth in express terms by the will, is a decision of an important question of Wisconsin law in a ^(T. 176) way probably in conflict with applicable decisions of the Wisconsin Supreme Court, and clearly in conflict with the

law of this case as determined by a final decision of the County Court for Milwaukee County, State of Wisconsin, made in regular course of probate. (T. 150-4)

3. The decision of the Circuit Court of Appeals, that the transfers in question did not speak as of the date of death as if set forth by express provision in the will, is an erroneous decision of an important question of general law in conflict with the weight of authority.

4. The decision of the Circuit Court of Appeals that a gift to charity, dependent upon a condition precedent which occurs necessarily after death but before the estate tax return is filed and the deduction can be allowed, is not deductible for estate tax purposes, involves an important question of federal law which has not been but should be settled by this court.

5. The decision of the Circuit Court of Appeals that a gift to charity, dependent upon a condition precedent which occurs before the tax is determined is not deductible for estate tax purposes, is a decision of a federal question in a way probably in conflict with applicable decisions of this court. (T. 179)

6. The decision of said Circuit Court of Appeals that the second part of Art. 47, Reg. 80 of the Treasury Department relates to transfers subject to conditions precedent, when in fact it relates only to conditions subsequent, (T. 181) is an erroneous construction of a federal law, the correction of which is of great importance to the administration of estates throughout the United States.

7. The decision of the Circuit Court of Appeals that only by strict construction, (T. 181) and not by natural or reasonable construction, is the second paragraph of Art. 47, Reg. 80 not applicable to the transfers in question is an

erroneous construction of federal law, which it is in the public interest to have corrected.

8. The decision by the Circuit Court of Appeals that transfers to charitable corporations upon condition can only be allowed as deductions, if the condition occurs prior to the date of death, ^(T. 183) is an erroneous construction of federal law, the correction of which by this court of last resort is of great importance.

9. The decision of the Circuit Court of Appeals that transfers or gifts to charity cannot be contingent or conditioned upon the exercise of a discretionary power conferred upon personal representatives or other tribunal for the testator, ^(T. 183, 9) is an erroneous construction of federal law, the correction of which is of great and widespread importance.

10. The decision of the Circuit Court of Appeals that the powers vested in the trustees, pursuant to which the transfers in question were made, were not imperative and mandatory speaking through the will of the testatrix, but merely precatory, ^(T. 183-9) as if the transfers were made by the trustees from their own personal estates is an erroneous construction of Wisconsin and general law in conflict therewith.

WHEREFORE, your petitioners pray that a writ of certiorari issue under the seal of this court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding said court to certify and send to this court a full and complete transcript of the record and of the proceedings of the said Circuit Court of Appeals had in the case numbered and entitled on its docket, No. 8062, Daniel W. Norris, Emmet L. Richardson, and Perry J. Stearns, as Executors of the Will of Fannie W. Norris, Deceased, Petitioners-Appellants, vs. Commissioner of In-

